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November 1, 1993

Office of the Secretary
Federal Communications Commission
Washington, DC 20554


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NOV 4 1993

FCC - MAIL ROOM

Enclosed are ten copies of my Petition for filing in ET DOCKET 93-62. Please provide each Commissioner with a personal copy.

Yours truly,



Sheldon L. Epstein

No. of Copies rec'd 049
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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NOV 4 1993

FCC - MAIL ROOM

In the Matter of

Guidelines for Evaluating the
Environmental Effects of
Radiofrequency Radiation

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ET Docket No. 93-62

PETITION

To The Commissioners:

WHEREAS:

1. The undersigned has been a resident of the Village of Wilmette in the County of Cook in the State of Illinois continuously since 1964 and intends to remain a resident for the foreseeable future;
2. The undersigned is a member of the Bar of the Supreme Court of the State of Illinois and of the Bar of the United States Supreme Court and is a Volunteer Counsel for the American Radio Relay League, Inc. (but not representing the League in this petition);
3. The undersigned is a degreed and practicing Electrical Engineer and a Senior Member of the Institute of Electrical and Electronics Engineers, Inc. (IEEE);
4. The undersigned is the holder of radio station licenses issued by both the Federal Communications Commission and the Department of Defense and operates radio transmitter stations pursuant to such licenses in the Village of Wilmette;
4. The undersigned is a customer of corporations which offer radio communications to the public under authority of radio station licenses issued by the Commission - including cellular mobile telephone and radio pager services;
6. The undersigned uses a Television Receive Only (TVRO) satellite station comprising a 7½ foot diameter antenna reflector;
7. The Board of Trustees of the Village of Wilmette has enacted local ordinances to prohibit or regulate radio station structures and transmissions in total disregard of the Commission's sole authority under the Federal Communications Act to regulate radio in the public interest, convenience and necessity and to supervise the maintenance of a national telecommunications policy;

8. An ordinance of the Village of Wilmette prohibits the erection and use of any TVRO antenna having a reflector in excess of 6 feet in diameter;
9. The Village of Wilmette continues to ignore a Commission pre-emption order of the Commission which bars enforcement of the Village's TVRO ordinance thereby infringing the First Amendment Rights of the undersigned and other residents under color of authority in direct contravention of the Civil Rights laws - which include the right to listen to others speak - by requiring that any unapproved TVRO antenna be removed and 2) demanding that permission of the Village be obtained before a TVRO antenna having a reflector greater than 6 feet in diameter be installed and used;
10. The Village continues to violate the First Amendment Rights and Civil Rights of residents by publishing warnings in its *COMMUNICATOR* newsletter against the erection and use of TVRO antennas without Village permission and has brought expensive suits (all so far unsuccessful) against some -but not all- residents who allegedly are in violation of an ordinance which has been pre-empted by an FCC Order;
11. The Village has brought an unsuccessful and expensive suit against Ameritech Mobile Communications, Inc. (AMERITECH) -a Commission licensee authorized to provide cellular mobile radio service in the Village- to obtain an order which would force AMERITECH to cease using a first cell site which it had erected in the Village at great expense;
12. AMERITECH has stated that it wishes to erect a second cell site in the Village;
13. Southwestern Bell Telephone Co. (CELLULAR ONE) -also a Commission licensee- operates a cell site within the Village in direct competition with AMERITECH;
14. CELLULAR ONE and licensees for other similar services may wish to erect more transmitter sites in the Village;
15. AMERITECH, CELLULAR ONE, other Commission licensees and the undersigned who are or who plan to operate radio transmitters within the Village do so under the authority of the Commission which licenses such operations only after the Commission has established under its sole authority that such operations will be conducted in accordance with the public interest, convenience and necessity;
16. The Board of Trustees of the Village of Wilmette caused an inquiry to be made into the question of the safety of radiofrequency radiation by cellular mobile radio antenna sites when it was learned that AMERITECH proposed to lease a second site atop Trinity Church - which is in the immediate vicinity of residences, preschools, schools and day care centers;
17. The Board of Health of the Village of Wilmette issued its conclusions on 21 APR 93 in a letter entitled *Recommendation of the Board of Health of the Village of Wilmette Concerning Health Implications of Cellular Antennae Installations and Other Telecommunications Devices* (attached hereto as Appendix B) containing the following conclusion:

To come directly to the point, we can find no compelling peer-reviewed scientific publications which prove a health effect from transmissions of cellular antennae. While we as residents of the Village understand the concerns of fellow residents and parents and appreciate that scientific investigation is ongoing, we feel that it is unwarranted to conclude otherwise at present. Thus, while the Village Board and its various committees in response to the concerns of Wilmette may choose to limit or otherwise curtail installation of new cellular antennae in the Village, we can find no certain evidence that decision should be based on health implications.;

18. The Board of Trustees, having received the aforementioned letter from the Board of Health and a written statement from the undersigned advising the Board that regulation of radio transmitters was with the exclusive jurisdiction of the Commission, nevertheless proceeded on 28 SEP 93 to adopt by a 4-to-3 vote Resolution No. 93-R-34 (attached hereto as Appendix A) containing among other requirements the following restrictions on the operation and placement of cellular mobile radio antenna sites in the Village:

- 1) power density will not exceed 0.25 microwatts/sq. cm. at ground level on properties 1000 feet or more from the proposed site,
- 2) power density will not exceed 1.00 microwatts/sq. cm. at ground level on properties within a 300 foot radius of the proposed site,
- 3) power density measurements to be taken at 10 foot intervals and other measurement requirements,
- 4) no site will be permitted in a residential zone or within 500 feet of a school, preschool or day care center,
- 5) that the testing personnel to be selected must be acceptable to the Village, and
- 6) that testing be conducted bi-annually by and at the expense of the applicant;

19. The three Trustees who voted against Resolution 93-R-43 favored a resolution which would have banned any cellular mobile antenna site in the Village under the so-called doctrine of *prudent avoidance* until it was established beyond doubt that transmissions from the such sites had no health effect;

20. No other product or service sold or offered in the Village is regulated in accordance with the so-called doctrine of *prudent avoidance* - especially including articles deemed hazardous by the Surgeon General of the United States, i.e. tobacco and alcoholic beverages - the sales of which are licensed and taxed by the Village;

21. The Village of Wilmette is largely residential with numerous school, preschool and day care centers, the net effect of Resolution 93-R-34 is not to regulate; but, when combined with pressure brought against individual landlords by local special interest groups, to prohibit the construction of any more cellular mobile transmitter sites in the Village - all to the detriment of the public interest, convenience, necessity and safety;

22. The Village, itself, operates VHF and UHF radio transmitters of significantly higher power than that of a cellular mobile antenna site within the zone prohibited to cellular mobile antenna sites by Resolution 93-R-34 and has done so for at least twenty years, without a single report of any health effect on a resident of the Village - including any resident who works in the vicinity of major UHF transmitter sites located on the roofs of Sears Tower and the John Hancock Bldg. in Chicago (19 miles Southeast of the Village);

23. The existing AMERITECH and CELLULAR ONE cellular mobile antenna sites have been operating within the zone prohibited to cellular mobile antenna sites by Resolution 93-R-34 without a single report of any health effect on a resident of the Village;

24. Village Board President John Jacoby caused a letter to be published in the 14 OCT 93 edition of the *Wilmette Life* (attached hereto as Appendix C) in which he stated:

The village's pre-resolution ordinances regulate cellular antennas only insofar as they make these facilities "special uses" under the zoning ordinance. The resolution tightens up this regulatory approach. It sets forth the maximum radio signal which should be allowed. And it directs that cellular antennas should not be created in residential districts or within 500 feet of schools, preschools or day care centers. To our knowledge, the limits established by the Resolution are by far the most stringent which exist anywhere.;

25. The undersigned has caused to be published in the *Wilmette Life* and in an open meeting of the Board of Trustees his statement to the effect that those in opposition should file a petition before the Commission which has the technical expertise to evaluate or cause to be evaluated any allegation that cellular mobile radio transmissions might be harmful and has caused to be delivered to the Board of Trustees and the *Wilmette Life* copies of this Petition so that the Village of Wilmette or an interested party might respond to this Petition in a timely manner before 10 NOV 93;

26. The Commission is considering the adoption of new standards for RF exposure which have been adopted by the American National Standards Institute in association with the Institute of Electrical and Electronics Engineers, Inc. (ANSI/IEEE C95.1-1992);

27. A plethora of local ordinances of the type enacted by the Village of Wilmette will usurp the Commission's authority to regulate radio, defeat the implementation of a national communications plan, increase the cost of radio communications and infringe citizens First Amendment Rights to freedom of communication;

28. The Village of Wilmette has shown itself to be an active litigator having spent (on information and belief) at least \$250,000 in legal fees in pursuing unsuccessful lawsuits which are at variance with the Commission's pre-emption orders and plans for a national communications policy and are at the expense of its residents and others who wish to exercise their rights to transmit and use radio signals in the Village; and

29. If left unrestrained by Commission action, the Village of Wilmette is likely to use Resolution 93-R-34 as precedent for regulating other radio services in the Village in contravention of the Commission's authority;

PETITION

Now, therefore the undersigned petitions the Commission to:

A. Adopt as its rule the new standards for RF exposure which have been adopted by the American National Standards Institute in association with the Institute of Electrical and Electronics Engineers, Inc. (ANSI/IEEE C95.1-1992) as the sole standards for Commission licensee compliance with all environmental regulations regarding RF emissions;

B. Incorporate in its ruling a pre-emption order containing a statement explicitly directing that local government shall have no authority to enact and enforce any law or ordinance relating to RF exposure or radio communication against any Commission licensee or any subscriber or user of a radio communications service licensed by the Commission; and

C. Emphasize in its pre-emption order that local governments be expressly prohibited from regulating Commission licensed facilities and facilities of those who use services (i.e. television broadcast receiving stations) in any manner which is different from any other structure or service in the jurisdiction so that local governments cannot achieve indirectly any goal that would be prohibited by direct regulation and prohibition.

Respectfully submitted,



Sheldon L. Epstein

P.O.B. 400

Wilmette, IL 60091-0400

708:853-1084 - 24 Hour Voice

708:251-3114 - FAX

1 NOV 93

RESOLUTION NO. 93-R-34

**A RESOLUTION CONCERNING THE WILMETTE VILLAGE
CODE, 1967, AS AMENDED, CHAPTER 20, ZONING ORDINANCE,
ARTICLE 4, DEVELOPMENT REVIEW PROCEDURES**

WHEREAS the President and the Board of Trustees believe it is in the public interest to provide guidance as to the interpretation of certain criteria affecting the approval of special use permits for the installation of telecommunications receiver/transmitter equipment while the Board is considering adoption of an ordinance to amend the Wilmette Zoning Code;

NOW BE IT RESOLVED BY the President and Board of Trustees of the Village of Wilmette, Illinois:

SECTION 1: That in interpreting the Wilmette Village Code, 1967, as amended, Chapter 20, Zoning Ordinance, Article 4, Development Review Procedures, Section 20-4.3.6, "Standards of Review," where the application for special use seeks approval for a public utility service use, as defined in Section 20-2.1.3 of Article 2 of this Zoning Ordinance, and said proposed public utility service use is the installation of transmission or retransmission antennae or other apparatus for cellular telephone communication, in determining whether said proposed special use satisfies subsection (a)(2) of said Section 20-4.3.6, the applicant should demonstrate:

(A) That the power density of radio frequency (RF) signal or transmission radiation caused by the proposed

APPENDIX A
PAGE 1

installation and operation:

(1) will not exceed 0.25 microwatts/sq.cm. at ground level on properties 1000 feet or more from the proposed site; and,

(2) will not exceed 1.00 microwatts/sq.cm. at ground level on properties within a 300 foot radius of the proposed site.

(3) In determining compliance with subparagraphs (A)(1) and (A)(2), measurements should be taken at 10 foot intervals at ground levels along the circumference of circles with a radius of 300 and a radius of 1000 feet from the proposed site, and the mean of these measurements across a property shall be the value used to determine compliance with subsections (A)(1) and (A)(2).

(B) That the proposed special use is not located on property zoned R, R-1, R-2, R-3 or R-4, and that the transmitter site is not within 500 feet of properties occupied at the time of the application for the special use permit as schools, preschools, or day care centers.

SECTION 2: In conducting the measurements described in Section 1(A)(3):

(A) The applicant shall agree to bear the costs of testing for compliance;

(B) The applicant shall use testing personnel acceptable to the Village and permit the Village to have observers present to inspect the equipment used and monitor the testing to insure its impartiality and

reliability;

(C) The applicant shall use testing equipment of sensitivity sufficient to discern existing UHF background RF radiation in the vicinity of the proposed site and the areas referred to in Section 1. The equipment used must have an up to date calibration certificate from a federally approved test laboratory and be operated by a qualified individual.

SECTION 3: As a condition of the special use permit, the applicant shall agree:

(A) That the applicant will immediately notify the Village of any change in transmission equipment or radiated energy, at which time the permit holder agrees to retesting to determine continued compliance with Section 1, at the permit holder's expense;

(B) That retesting of the site to determine continuing compliance shall be conducted by the applicant bi-annually on the anniversary of the commencement of the special use and the results of said retest provided to the Village.

(C) That continued use and enjoyment of the special use permit is conditional upon:

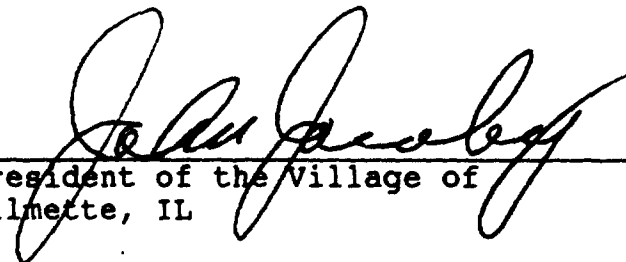
(1) Continued compliance with the standards set forth in Section 1; and,

(2) Continued compliance with the terms of Section 3.

ADOPTED by the President and Board of Trustees of the Village
of Wilmette, Illinois, on the 28th day of September, 1993.


AYE: 4

NAY: 3



President of the Village of
Wilmette, IL

ATTEST:



Clerk of the Village of
Wilmette, IL

April 21, 1993

Mr. John Jacoby, President
Village of Wilmette
Wilmette, IL 60091

Re: Recommendation of the Board of Health of the Village of
Wilmette Concerning Health Implications of Cellular Antennae
Installations and Other Telecommunications Devices

Dear John:

On Thursday, March 11, 1993 the Board of Health of the Village of Wilmette held a public hearing specifically to address the above issue. In proceedings which lasted over three-and-a-half hours the members of the Board heard presentations by experts from Ameritech, Inc., coordinated by their legal representative, Mr. Richard C. Riley. Following this, again for over an hour, the Board heard the testimony of three experts retained by the Village of Wilmette and I entered into the record the written testimony of Dr. Stephen Cleary, another expert retained by the Village. Finally, for the last hour to hour-and-a-half of the meeting we received public comment from in excess of 10 village residents and other interested members concerning their views on the issue. Prior to and since the public hearing I and other members of the Board have reviewed extensive scientific literature from both peer-reviewed journals and the lay press. In addition, I had the opportunity to study in depth a publication entitled "Health Effects of Low Frequency Electric and Magnetic Fields" published in June of 1992 and prepared by the Oak Ridge Associated Universities Panel.

At the outset we recognize that we are addressing a different issue than we were previously asked to address by the Village Board, i.e., the health effects of EMF as associated with power line transmission by Commonwealth Edison. The emissions of cellular antennae, while part of the same spectrum as EMF, are clearly distinct from both a practical and a scientific basis. Thus, it would not be correct for us to apply our policy of "prudent avoidance" which we recommended to the Village Board in dealing with the issue of EMF and power line transmission merely by extension. Rather, the present issue must be considered separately.

APR 23 1993

APPENDIX B
B-1

To come directly to the point, we can find no compelling peer-reviewed scientific publications which prove a health effect from the transmissions of cellular antennae. While we as residents of the Village understand the concerns of fellow residents and parents and appreciate that scientific investigation is ongoing, we feel that it is unwarranted to conclude otherwise at the present. Thus, while the Village Board and its various committees in response to the concerns of the citizens of Wilmette may choose to limit or otherwise curtail installation of new cellular antennae in the Village, we can find no certain evidence that this decision should be based on the health implications.

We will continue to review all the evidence brought before us on this issue and would be glad to respond to any specific concerns that you or the other trustees may have on this very important subject.

Sincerely yours,

A handwritten signature in cursive script that reads "Bill Arnold".

William J. Arnold, M.D.
Chairman of the Board of Health
Village of Wilmette

c: Diane Bader, R.N.

Jacoby explains antenna vote

The following letter was written Village President John Jacoby in response to letter printed in the Oct. 7 Wilmette Life.

This letter is in response to a letter last week, pointing out that I didn't articulate my rationale for favoring the "cellular antenna" resolution at the Sept. 28 Village Board meeting. My practice is to explain my votes on controversial issues, but on Sept. 28 I felt that my primary challenge was to maintain order at the meeting.

Those calling for a ban on cellular antennas believe that the radio signals from these antennas may pose a health hazard. There's no direct evidence to this effect, as the Wilmette Board of Health reported following its study earlier this year. And although cellular communications are relatively new, people have been exposed to radio signals for many years without any obvious health effect.

However, the advocates of a ban point to evidence that electrical and magnetic fields — at certain frequencies and intensities different from those of cellular antennas — do have health implications. They urge that conclusive health studies should be completed (which will probably take many years) before cellular antennas are allowed.

The advocates of a ban see no other interests to be accommodated. But there are other interests, all of which are legally

protected. Most important, there is the interest of the people who use cellular telephones, an interest which has been recognized by the Federal Communications Commission. This interest can't be recognized unless cellular antennae are allowed.

Once regarded as a frivolous luxury, cellular telephones are now commonplace. They are used heavily in business, for protection in emergencies, and as a backup for the regular telephone system. It's inevitable that cellular communications will expand in the next few years — because the uses and users are expanding rapidly.

The advocates of a ban respond that cellular antennas don't have to be located in Wilmette — let some other town host these facilities. However, I believe we can't adopt a ban in Wilmette based on health concerns unless we're willing to acknowledge that our neighboring towns should do the same. And if Wilmette and all of its neighboring towns were to adopt the ban, the quality of cellular service in Wilmette would clearly be affected adversely.

Other interests

There are two secondary interests to be considered. One is the interest of the two companies which have been licensed by the FCC to engage in the business of cellular communications in this area, and to

construct the necessary facilities. The other is the interest of an owner of commercially zoned property in Wilmette who, in collaboration with a cellular telephone company, wishes to use that property as the site for a cellular antenna. Banning cellular antenna would interfere with the business of these two companies, and the property owner's use of his property.

While local government has the right to regulate business and property to protect public health, I don't believe the existing evidence of a health hazard would stand up legally as a rational basis for the interference which would result from a ban.

The village's pre-resolution ordinances regulate cellular antennas only insofar as they make these facilities "special uses" under the zoning ordinance. The resolution tightens up this regulatory approach. It sets forth the maximum radio signal which should be allowed. And it directs that cellular antennas should not be created in residential districts or within 500 feet of schools, preschools, or day care centers. To our knowledge, the limits established by the Resolution are by far the most stringent which exist anywhere.

The resolution thus implements a policy of "prudent avoidance." It addresses the health concern while accommodating other interests. This is my rationale for supporting it.

■ Letters *Continued from page 14*

Sue Rahsher most qualified candidate

Wilmette/We would like to encourage your support for

parents, teachers, administrators, and researchers within school systems of all types. We cannot afford to miss an opportunity to elect this

has extensive experience in the education field as an education evaluation consultant. She not only has professional experience but has been very involved in



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APPENDIX C